Criminal Writ Petition no.700 (M/B) of 2002.

Dr. Udai Shankar and others … Petitioners

Versus

State of Uttaranchal & another …. Respondents

Hon'ble P.C. Verma, A.C.J.
Hon'ble Irshad Hussain, j.

Heard Sri Naresh Pant, learned counsel for the petitioner and the learned Government Advocate.

Petitioner has preferred the writ petition to issues a writ in the nature of certiorari for quashing F.I.R. dated 16.10.2002 lodged by respondent no.2 and further to issue writ in the nature of mandamus directing respondent no.1 not to give effect and the operation to the said F.I.R.

Petitioner no.1 is the husband of respondent no.2 who lodged at F.I.R. on 16.10.2002 making allegations against the petitioner regarding her harassment and ill-treatment for and in connection with demand of extra dowry etc. Case was registered under section 498-A, 323, 504, 506, 494 I.P.C. and ¾ Dowry Prohibition Act. It was been reported that after investigation charge-sheet had been submitted by the investigating officer.

After filing of the present petition the contesting parties, the husband and wife, petitioner no.1 and respondent no.2 respectively have entered into a compromise by way of filing a mutual consent divorce petition before the Family Court, Nainital. Affidavit to this effect was submitted by respondent no.2 Smt. Surabhi who also averred that under the compromise the child born out of the wedlock has been delivered to her by the petitioners. It is thus the admitted position that the matrimonial dispute which was the cause

of lodging of the above F.I.R. has been amicably settled and now after grant of divorce the parties will be free to lead their life as they wish and may settle themselves in life independently or may enter into wedlock to lead married life. This may happen at the earliest if there remain no criminal proceedings pending in courts which may cause delay in their settling in life in their own way. To avoid this the parties have sought the relief of quashing of the F.I.R. and the criminal proceedings.

A latest decision of the apex court reported in **2003(3) Supreme 227, B.S. Joshi and other Vs State of Haryana and another** has been pressed into service in support of the argument that on the basis of the compromise entered into between the parties the criminal proceedings or F.I.R. could legally be quashed by the court in exercise of inherent powers under section 482 of the Code of Criminal Procedure (hereinafter for short "Code") and also in the exercise of its jurisdiction under Article 226 of the Constitution of India even ignoring the fact that the offences with which the alleged wrong doer has been charged or saddled with the responsibility of committing offence are non-compoundable as contemplated by section 320 of the Code. The apex court observed that:

> "It is, thus, clear that Madhu Limaye's case does not lay down any general proposition limiting power of quashing the criminal proceedings or FIR or complaint as vested in section 482 of the Code or extra ordinary power under Article 226 of the Constitution of India. We are, therefore, of the view that if for the purpose of securing the ends of justice, quashing of FIR becomes necessary, section 320 would not be a bar to the exercise of power of quashing. It is, however, a different matter depending upon the facts and circumstances of each case whether to exercise or not such a power."

In view of above it is immaterial if the offences alleged to have been committed by the petitioners are not compoundable within the meaning of section 320 of the Code but the court in exercise of its powers under Article 226 of the Constitution of India can quash criminal proceedings or F.I.R. or complaint so that the matrimonial dispute come to an end and the parties could at the earliest settle in life. The reported decision applies to the facts

of the instant case and in view thereof the petition deserves to be allowed for appropriate relief.

Petition is allowed and the F.I.R. dated 16.10.2002 in question as well as charge-sheet filed in said case crime no. 2904 of 2002, under sections 498-A, 323, 504, 506, 494 I.P.C. and ¾ Dowry Prohibition Act, Police Station Haldwani District Nainital are quashed.

(P.C. Verma, A.C.J.) (Irshad Hussain, J.)

23.05.2003./B